

Type a plus sign (+) inside this box → ☐

Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

0010/PTO Rev. 6/95	U.S. Department of Commerce Patent and Trademark Office	Attorney Docket Number	M 6677 PCT/US HST
<h2 style="margin: 0;">DECLARATION FOR UTILITY OR DESIGN PATENT APPLICATION</h2> <p style="margin-top: 20px;"> <input type="checkbox"/> Declaration Submitted with Initial Filing                             OR                             <input checked="" type="checkbox"/> Declaration Submitted after Initial Filing                         </p>		First Named Inventor	Goodreau, et al
		COMPLETE IF KNOWN	
		Application Number	
		Filing Date	
		Group Art Unit	
		Examiner Name	

As a below named inventor, I hereby declare that:

My residence, post office address, and citizenship are as stated below next to my name.

I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled:

**COMPOSITION AND PROCESS FOR TREATING METAL SURFACES**

*(Title of the Invention)*

the specification of which

☐ is attached hereto

OR

☒ was filed on (MM/DD/YYYY) March 3, 2000 as United States Application Number or PCT International

Application Number PCT/US00/05766 and was amended on (MM/DD/YYYY)                      (if applicable).

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment specifically referred to above.

I acknowledge the duty to disclose information which is material to patentability as defined in Title 37 Code of Federal Regulations, § 1.56.

I hereby claim foreign priority benefits under Title 35, United States Code §119(a)-(d) or §365(b) of any foreign application(s) for patent or inventor's certificate, or §365(a) of any PCT International application which designated at least one country other than the United States of America, listed below and have also identified below, by checking the box, any foreign application for patent or inventor's certificate, or of any PCT International application having a filing date before that of the application on which priority is claimed.

Prior Foreign Application Number(s)	Country	Foreign Filing Date (MM/DD/YYYY)	Priority Not Claimed	Certified Copy Attached?
				YES NO
			<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>

☐ Additional foreign application numbers are listed on a supplemental priority sheet attached hereto.

I hereby claim the benefit under Title 35, United States Code §119(e) of any United States provisional application(s) listed below.

Application Number(s)	Filing Date (MM/DD/YYYY)	Additional provisional application numbers are listed on a supplemental priority sheet attached hereto.
60/122,810	March 4, 1999	<input type="checkbox"/>
60/158,171	October 7, 1999	
60/147,932	August 9, 1999	

**Burden Hour Statement:** This form is estimated to take .4 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington DC 20231.

Type a plus sign (+) inside this box + ☐**DECLARATION****Page 2**

I hereby claim the benefit under Title 35, United States Code §120 of any United States application(s), or §365© of any PCT international application designating the United States of America, listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States or PCT international application in the manner provided by the first paragraph of Title 35, United States Code §112.1 acknowledge the duty to disclose information which is material to patentability as defined in Title 37, Code of Federal Regulations §1.56 which became available between the filing date of the prior application and the national or PCT international filing date of this application.

U.S. Parent Application Number	PCT Parent Number	Parent Filing Date (MM/DD/YYYY)	Parent Patent Number (if applicable)

☐ Additional U.S. or PCT international application numbers are listed on a supplemental priority sheet attached hereto.

As a named inventor, I hereby appoint the following attorney(s) and/or agent(s) to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith:

<input type="checkbox"/> Firm Name		Customer Number	or label	00423
OR				

☒ List Attorney(s) and/or agent(s) name and registration number below:

Name	Registration Number	Name	Registration Number
Wayne C. Jaeschke	21,061	Daniel S. Ortiz	25,123
Stephen D. Harper	33,243		
Glenn E. J. Murphy	33,539		
Kimberly R. Hild	39,224		

☐ Additional attorney(s) and/or agent(s) named on a supplemental sheet attached hereto.

Please direct all correspondence to: ☒ Customer Number or label **00423** OR ☐ Fill in correspondence address below

Name	Wayne C. Jaeschke						
Address	Henkel Corporation - Patent Department						
Address	2500 Renaissance Blvd, Suite 200						
City	Gulph Mills	State	PA	Zip	19406		
Country	USA	Telephone	610-278-4920	Fax	610-278-6548		

hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

**Name of Sole or First Inventor:** ☐ A petition has been filed for this unsigned inventor

Given Name	Bruce	Middle Initial	H.	Family Name	Goodreau	Suffix e.g. Jr.	
Inventor's Signature					Date		
Residence: City	Romeo	State	MI	Country	USA	Citizenship	USA
Post Office Address	11455 35 Mile Road						
Post Office Address							
City	Romeo	State	MI	Zip	48065	Country	USA
Applicant Authority							

☒ Additional inventors are being named on supplemental sheet(s) attached hereto

Type a plus sign (+) inside this box → ☐

<b>DECLARATION</b>										<b>ADDITIONAL INVENTOR(S) Supplemental Sheet</b>						
<b>Name of Additional Joint Inventor, if any:</b>						<input type="checkbox"/> A petition has been filed for this unsigned inventor										
Given Name	<b>Robert</b>			Middle Initial	<b>W.</b>		Family Name	<b>Miller</b>			Suffix e.g. Jr.					
Inventor's Signature										Date						
Residence: City		<b>Oakland</b>			State	<b>MI</b>		Country		<b>USA</b>		Citizenship	<b>USA</b>			
Post Office Address		<b>1510 W. Predmore Road</b>														
Post Office Address																
City	<b>Oakland</b>			State	<b>MI</b>		Zip	<b>48363</b>		Country		<b>USA</b>		Applicant Authority		
<b>Name of Additional Joint Inventor, if any:</b>						<input type="checkbox"/> A petition has been filed for this unsigned inventor										
Given Name	<b>Thomas</b>			Middle Initial	<b>J.</b>		Family Name	<b>Prescott</b>			Suffix e.g. Jr.					
Inventor's Signature										Date						
Residence: City		<b>Troy</b>			State	<b>MI</b>		Country		<b>USA</b>		Citizenship	<b>USA</b>			
Post Office Address		<b>1601 Brentwood</b>														
Post Office Address																
City	<b>Troy</b>			State	<b>MI</b>		Zip	<b>48098</b>		Country		<b>USA</b>		Applicant Authority		
<b>Name of Additional Joint Inventor, if any:</b>						<input type="checkbox"/> A petition has been filed for this unsigned inventor										
Given Name	<b>Christopher</b>			Middle Initial	<b>A.</b>		Family Name	<b>Engel</b>			Suffix e.g. Jr.					
Inventor's Signature										Date						
Residence: City		<b>Farmington</b>			State	<b>MI</b>		Country		<b>USA</b>		Citizenship	<b>USA</b>			
Post Office Address		<b>34133 Cortland</b>														
Post Office Address																
City	<b>Farmington</b>			State	<b>MI</b>		Zip	<b>48335</b>		Country		<b>USA</b>		Applicant Authority		
<b>Name of Additional Joint Inventor, if any:</b>						<input type="checkbox"/> A petition has been filed for this unsigned inventor										
Given Name	<b>Michael</b>			Middle Initial	<b>A.</b>		Family Name	<b>Murphy</b>			Suffix e.g. Jr.					
Inventor's Signature										Date						
Residence: City		<b>Armada</b>			State	<b>MI</b>		Country		<b>USA</b>		Citizenship	<b>USA</b>			
Post Office Address		<b>24914 Armada Ridge</b>														
Post Office Address																
City	<b>Armada</b>			State	<b>MI</b>		Zip	<b>48005</b>		Country		<b>USA</b>		Applicant Authority		
<input type="checkbox"/> Additional inventors are being named on supplemental sheet(s) attached hereto																

<b>DECLARATION</b>										<b>ADDITIONAL INVENTOR(S) Supplemental Sheet</b>					
<b>Name of Additional Joint Inventor, if any:</b>						<input type="checkbox"/> A petition has been filed for this unsigned inventor									
Given Name	<b>James</b>			Middle Initial	<b>P.</b>	Family Name	<b>Bershas</b>			Suffix e.g. Jr.					
Inventor's Signature							Date								
Residence: City	<b>West Bloomfield</b>			State	<b>MI</b>		Country	<b>USA</b>			Citizenship	<b>USA</b>			
Post Office Address	<b>2284 Strader Drive</b>														
Post Office Address															
City	<b>West Bloomfield</b>			State	<b>MI</b>		Zip	<b>48324</b>		Country	<b>USA</b>		Applicant Authority		
<b>Name of Additional Joint Inventor, if any:</b>						<input type="checkbox"/> A petition has been filed for this unsigned inventor									
Given Name	<b>John</b>			Middle Initial	<b>R.</b>	Family Name	<b>Pierce</b>			Suffix e.g. Jr.					
Inventor's Signature							Date								
Residence: City	<b>Huntington Woods</b>			State	<b>MI</b>		Country	<b>USA</b>			Citizenship	<b>USA</b>			
Post Office Address	<b>13124 Winchester</b>														
Post Office Address															
City	<b>Huntington Woods</b>			State	<b>MI</b>		Zip	<b>48070</b>		Country	<b>USA</b>		Applicant Authority		
<b>Name of Additional Joint Inventor, if any:</b>						<input type="checkbox"/> A petition has been filed for this unsigned inventor									
Given Name				Middle Initial		Family Name				Suffix e.g. Jr.					
Inventor's Signature							Date								
Residence: City				State			Country				Citizenship				
Post Office Address															
Post Office Address															
City				State			Zip			Country			Applicant Authority		
<b>Name of Additional Joint Inventor, if any:</b>						<input type="checkbox"/> A petition has been filed for this unsigned inventor									
Given Name				Middle Initial		Family Name				Suffix e.g. Jr.					
Inventor's Signature							Date								
Residence: City				State			Country				Citizenship				
Post Office Address															
Post Office Address															
City				State			Zip			Country			Applicant Authority		
<b>Name of Additional Joint Inventor, if any:</b>						<input type="checkbox"/> A petition has been filed for this unsigned inventor									
Given Name				Middle Initial		Family Name				Suffix e.g. Jr.					
Inventor's Signature							Date								
Residence: City				State			Country				Citizenship				
Post Office Address															
Post Office Address															
City				State			Zip			Country			Applicant Authority		
<input type="checkbox"/> Additional inventors are being named on supplemental sheet(s) attached hereto															

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

HENKEL CORPORATION,	)	
	)	
Plaintiff,	)	
v.	)	
	)	Civil Action No. 00-576
OAKITE PRODUCTS, INC.,	)	
	)	
Defendant.	)	

-----

**AFFIDAVIT OF NOEL SMITH**

Noel Smith, being duly sworn, hereby states:

**I. INTRODUCTION**

1. I am the Senior Research Manager for Organic Coatings and Lubricants for Oakite Products, Inc. ("Oakite"), an affiliate of Chemetall GmbH ("Chemetall"). I work at Berkeley Heights, NJ and at other Oakite and Chemetall facilities in the United States and overseas.

2. I have had this position since 1997. Prior to this position I was a Senior Research Chemist at Oakite.

3. I am very familiar with the use, composition formulation and development of a product sold by Oakite under the trade name "Gardobond® VP4918/2".

4. I have therefore been asked to provide information relating to the composition and formulation of Gardobond® VP4918/2. My comments also relate to a product sold by Oakite under the trade name "Gardobond® PCP4610", a more recently developed product, the composition of which is similar to that of Gardobond® VP4918/2. In the comments which

follow, references to the composition Gardobond® VP4918/2 are meant to also refer to Gardobond® PC4610.

## **II. DEVELOPMENT OF GARDOBOND® VP4918/2**

5. Gardobond® VP4918/2 was developed for the purpose of aiding the production of metal products, particularly zinc/aluminum hot dip coated sheet steel known as Galvalume®, by permitting cold forming of Galvalume® while minimizing structural and cosmetic damage to the metal.

6. I have read the affidavit of Mr. Jim Reed dated March 14, 2001, regarding the marketing, sales, composition and formulation Gardobond® VP4918/2. I concur entirely with everything stated in that affidavit. In particular, agree with the portion of Mr. Reed's affidavit subtitled "Formulation of Gardobond® VP4918/2".

7. I add the following comments to Mr. Reed's affidavit.

8. Gardobond® VP4918/2 was first formulated in Germany in 1993 by my colleague Mr. Heribert Domes of Chemetall. This 1993 formulation of Gardobond® VP4918/2 contained a wax component.

9. I am aware of the wax component in the 1993 formulation because I have spoken with Mr. Domes on a number of occasions over the years regarding the Gardobond® VP4918/2 formulation, and because I have personally seen Chemetall internal documents, dating back to 1993, containing the formulation specification for Gardobond® VP4918/2.

10. Gardobond® VP4918/2 was first formulated in the United States in 1997, and I have always been responsible for the U.S. formulation of Gardobond® VP4918/2.

11. I was provided with the specifications for the Gardobond® VP4918/2 formulated in the U.S. by Mr. Domes of Chemetall. The U.S. formulation for Gardobond® VP4918/2 has always contained a wax component.

12. The specific type of wax used in the German formulation of Gardobond® VP4918/2 is not only chemically identical to the wax used in the U.S. formulation, it is actually the same wax, purchased from the same source, having the same trade name, and quite possibly from the same production batch. The wax is a monocrystalline polyethylene wax which is typically introduced into the composition via an emulsion.

13. Moreover, all German and U.S. formulations of Gardobond® VP4918/2 have, at all times, included a high amount of (i) a polyurethane dispersion and (ii) a styrol acrylate copolymer

14. Gardobond® VP4918/2 composition have been sold in the United States and several other countries since about 1994. Starting in 1997, the Gardobond® VP4918/2 sold in the U.S. was formulated in the U.S.

### **III. WO 00/35595 and WO 00/52226**

15. I have been asked to review two recent PCT publications which were filed on behalf of Henkel Corporation ("Henkel"). The publications are: WO 00/35595 and WO 00/52226, both entitled "Composition and Process for Treating Metal Surfaces".

16. I have also been asked to comment on whether any of the features claimed in these publications are found in Gardobond® VP4918/2, or in the process for making Gardobond® VP4918/2.

17. I have concluded that many of the features claimed in these publications are in fact found in Gardobond® VP4918/2, or in the process for making Gardobond® VP4918/2. The following comments set out the subject matter claimed in the Henkel publications which overlaps with what already exists in Gardobond® VP4918/2, or in the process for making Gardobond® VP4918/2.

18. Referring to the claims of WO 00/35595, claim 1, I note initially that the recited general steps of “forming” and “drying” (page 19, lines 2 – 9) are necessarily performed in using Gardobond® VP4918/2. I further note that in the forming step Gardobond® VP4918/2 can react to form a modified surface with a lower coefficient of friction, and that in the drying step Gardobond® VP4918/2 dries in place without rinsing. Because this portion of the claim simply recites the prior art, there is no need to comment further.

19. Claim 1 recites the presence of water and (A) dissolved and/or dispersed film forming resin, (B) dissolved and/or dispersed wax that is not part of (A), and (C) dissolved and/or dispersed hexavalent chromium Gardobond® VP4918/2 comprises water and all three components (A), (B) and (C).

20. Claim 2, which depends from claim 1, recites a wax solids to resin solids ratio - (B):(A) ratio - of “at least about 0.6:1.0.” This ratio indicates that the percentage of wax to total solids is about 38%. (Calculation:  $(.6) / (1.0 + .6) = .38$ ) Compared to the amount of wax in



Gardobond® VP4918/2, this is extremely high. That is, the percentage of wax to total solids in Gardobond® VP4918/2 is much lower than the percentage claimed in claim 2 of WO 00/35595.

21. Claim 3 claims a  $\text{CrO}_3$  : resin (A) ratio of “at least about 0.0050:1.0.” This amount of  $\text{CrO}_3$  in Gardobond® VP4918/2 falls is “at least about 0.0050:1.0.”

22. Claim 4 lists eight categories of compounds which the resin (A) can be. All of the resins used to formulate Gardobond® VP4918/2 fall within at least some of these eight categories.

23. Claim 5 requires that the wax component (B) be a polyethylene wax with a melting point of “from about 85 to about 150° C”. The wax used in Gardobond® VP4918/2 has a melting point of from about 85 to about 150° C.

24. Claim 6 apparently related to preferred process conditions, and requires: an (A):(B) ratio of .09:1.0 - .15:1.0; a  $\text{CrO}_3$ :resin-(A) ratio of 0.0140:1.0 – 0.030:1; and a metal substrate temperature of at least 88° C. The  $\text{CrO}_3$ :resin ratio range is consistent with Gardobond® VP4918/2, and Gardobond® VP4918/2 can be applied successfully at 88° C and much higher. The (A):(B) ratio claimed is still significantly higher than what is found in Gardobond® VP4918/2.

25. Claims 7 through 20 of WO 00/35595 essentially recite the same ranges and ratios as the claims discussed above. I will therefore not comment further with respect to these claims.

26. Moreover, claims 1 through 19, 21 and 22 of WO 00/52226 essentially recite the same ranges and ratios as the claims of WO 00/35593 discussed above. I will therefore not comment further with respect to these claims.

27. Claim 20 of WO 00/52226 recites the presence of an additional component selected from: “esters with a structure that can be made by completely esterifying orthophosphoric acid or sulfuric acid with at least one monoalcohol...” and “glycols, polyglycols, and the ethers and esters of glycols and polyglycols, i.e., molecules that conform to the general formula... $R^1-O-R^2-(OR^3)_n-O-R^4$ ...”. These components are not found in Gardobond® VP4918/2. However, such components are disclosed in U.S. Patent No. 6,034,041 to Nittel, which is discussed more fully below.

#### IV. UNITES STATES PATENT NO. 6,034,041

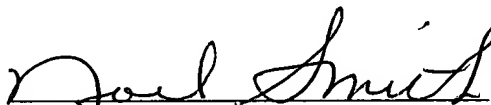
28. I have been asked to read United States Patent No. 6, 034,041 to Nittel (“Nittel ‘041”), and to comment on whether any of the features claimed in Henkel’s WO 00/35595 and/or WO 00/52226 are disclosed in that patent. I note that Nittel ‘041 corresponds to EP 0 718 396 B1 (both of which are assigned to Chemetall-related company Metallgesellschaft AG).

29. Most interestingly, I note that claim 5 of WO 00/35595 refers to its “wax component (B)” being “a polyethylene wax with a melting point in a range from about 85 to about 150° C.” This description is wholly consistent with the disclosure in Nittel ‘041 of a cold forming lubricant containing “(a) ... polyethylene with a softening point above 120°C ....” (see Abstract; col. 2, lines 10-12; claim 1). That is, based on my experience with cold forming lubricant technology, I understand this language in Nittel ‘041 to refer to a polyethylene *wax* of the type claimed in claim 5 of WO 00/35595. It has been pointed out to me that Nittel ‘041 was filed August 20, 1998, almost four months prior to the filing date of the earlier Henkel publication WO 00/35595 of December 11, 1998.

30. I also note that the elements (b) and (c) of claim 1 of Nittel '041 are also found in the respective claim 1's of WO 00/35595 and WO 00/52226.

31. As noted above, claim 19 of WO 00/52226 recites the presence of an additional component selected from: "esters with a structure that can be made by completely esterifying orthophosphoric acid or sulfuric acid with at least one monoalcohol..." and "glycols, polyglycols, and the ethers and esters of glycols and polyglycols, i.e., molecules that conform to the general formula... $R^1-O-R^2-(OR^3)_n-O-R^4$ ...". As I understand the WO 00/5226 publication, this feature represents the sole difference with WO 00/35595. Although not found in Gardobond® VP4918/2, it is claimed in Nittel '041 at claims 7 ("sulfosuccinic acid diester") and 13 ("ethoxylated fatty alcohol").

\* \* \*



Noel Smith

Title: Senior Research Manager for Organic  
Coatings and Lubricants  
Oakite Products, Inc.

09/914056  
Rec'd PCT/PTO

21 AUG 2001

*Stephen  
Harper*IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

HENKEL CORPORATION,

Plaintiff,

v.

OAKITE PRODUCTS, INC.,

Defendant.

Civil Action No. 00-576

AFFIDAVIT OF JIM REED

Jim Reed, being duly sworn, hereby states:

1. I am the General Manager for General Industries/Coil for Chemetall Oakite ("Oakite"), a Division of Chemetall GmbH, doing business at 50 Valley Road, Berkeley Heights, NJ 07922.

2. I have had this position since July 2000. Prior to this position I was Industry Manager for Coil.

3. I have been asked to provide information relating to passivation industry's knowledge of, and the formulation of, a product sold by Oakite called "Gardobond® VP4918/2".

4. I am familiar with the use, composition, development, marketing and industry knowledge of Gardobond® VP4918/2.

5. Gardobond® VP4918/2 was developed for the purpose of aiding the production of metal products, particularly zinc/aluminum hot dip coated sheet steel known as Galvalume®, by permitting cold forming of Galvalume® while minimizing structural and cosmetic damage to the metal.

25008605.1

RECEIVED HENKEL LAW DEPT  
ACTION \_\_\_\_\_ INFO SDH/MB

REC'D MAY 08 2001

DUE \_\_\_\_\_

FILE \_\_\_\_\_

Industry Knowledge of Wax in Gardobond® VP4918/2

6. Gardobond® VP4918/2 was evaluated in the later half of 1994 in NamZAC trials. "Parker" was a participant in the NamZAC trials (Ex. A)
7. Prior to the NamZAC trials, Gardobond® VP4918/2 was evaluated in InterZAC trials. "Parker" was a participant in the InterZAC trials (Ex.B).
8. An important goal of the NamZAC and InterZAC trials was to develop a product that would enhance roll forming of Galvalume® without the use of additionally applied oil.
9. Gardobond® VP4918/2 was also tested at trials conducted on the premises of its customers. Henkel and Parker also tested their own products with their customers, which were often Oakite's customers as well. It was common, during customer trials, for Henkel and Oakite technical personnel to discuss and even attend each other's test runs.
10. Henkel and/or Parker personnel who attended customer trials at which Oakite tested the Gardobond® VP4918/2 composition included, but are not limited to, Mr. Reed Hall (sales and marketing manager), Mr. Karl Korinek (technical manager), Mr. Robert Miller (technical department), Mr. Dan Justice (sales representative) and Mr. Mike Perkins (sales representative.).
11. On March 12, 1997, Parker Amchem employees tested a product at Precoat Metals Northgate in Granite City, IL. This testing took place immediately after Oakite employees tested Gardobond® VP4918/2 there. At least 8 Parker Amchem employees were present. (Ex. C).

12. In June, 1995 trial runs took place at Precoat Metals in Jackson, MS. Oakite's Gardobond® VP4918/2/2 was tested in one run, and Henkel's TD 1342AA composition was tested in another. (Ex. D).

13. Other instances occurred where Oakite and Henkel/Parker personnel conducted test runs contemporaneously.

Formulation of Gardobond® VP4918/2

14. From 1993 through 1998, Gardobond® VP4918/2 was formulated in Germany by Chemetall and shipped to the United States. (Ex. E).

15. Beginning in 1997, Gardobond® VP4918/2 was formulated in the United States. The German and U.S. formulations both contained wax in equal proportions.

16. Gardobond® VP4918/2, from the dates of its earliest use and sale in the United States, contained wax.

17. From the date of the first sale of Gardobond® VP4918/2 or shortly thereafter, Oakite's customers were aware that this substance contained wax.

18. Oakite customers were made aware of the wax in VP4918/2 because it was understood in the passivation industry that the presence of a lubricant, for instance oil or wax, was required in any cold forming composition. Because the Gardobond® VP4918/2 did not contain an oil, members of the passivation industry, for instance Henkel, would have assumed that it contained the functional equivalent of oil, i.e., wax.

19. On several occasions I mentioned the wax content of Gardobond® VP4918/2 in conversations with Oakite customers. To the best of my recollection, these conversations took place from 1994-1997.

20. In speaking with customers regarding the wax content of Gardobond® VP4918/2, I never requested that the inclusion of a wax component be kept secret. There would have been no need for this since, as noted, the wax component was assumed to be present by members of the passivation industry.

21. A publication of European Commission entitled "Development of high performance, low toxicity anti-fingerprint organic treatment of hot-dip Al-Zn coated steel sheet for building and home appliance applications," covering the period of July 1, 1992 through June 30, 1995, refers to the use "forming additive 1" and "forming additive 2" used in conjunction with Gardobond® VP4918/2/2. The passivation industry understood these additives to refer to wax composition. (Ex. F).

22. I am in the possession of documents produced in the ordinary course of business at Chemetall which refer to the wax content of Gardobond® VP4918/2. These documents either mention wax (wachs) explicitly, or refer to the trade name of the wax used. These documents also refer to the relative proportions of wax in the overall VP4918/2 composition.

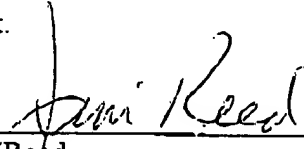
23. I am in the possession of documents produced in the ordinary course of business at Oakite which refer to the wax content of VP4918/2. These documents either mention wax (wachs) explicitly, or refer to the trade name of the wax used. These documents also refer to the relative proportions of wax in the overall Gardobond® VP4918/2 composition.


24. The total wax content in the German formulation of Gardobond® VP4918/2 is and has always been identical to the wax content in the U.S. composition.

25. The same wax has always been used in all U.S. and German formulations of Gardobond® VP4918/2.

26. Other Oakite passivation products marketed in the U.S. also contain a wax component. These include VP4918/3, VP10 088, PC8901, PC8910, VP10061 and VP10128.

27. The wax component in Gardobond® VP4918/2 is sold separately in the U.S. under the trade name 4918/2L. This product is used in conjunction with Gardobond® 4918/2 in "extreme" applications requiring additional lubricant.

  
\_\_\_\_\_  
Jim Reed  
General Manager, General Industries/Coil  
Chemetall Oakite

  
\_\_\_\_\_  
KAREN JOAN ECONOMOU  
Notary Public of New Jersey  
My Commission Expires Aug. 27, 2007





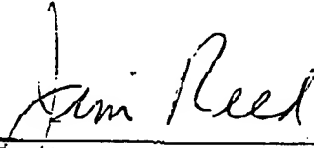
by permitting cold forming of Galvalume® while minimizing structural and cosmetic damage to the metal.

Sales and Marketing of Gardobond® VP4918/2

6. Gardobond® VP4918/2 was first sold in the United States by Oakite in 1994.
7. In 1994, Gardobond® VP4918/2 sales in the U.S. were approximately \$7,000.
8. In 1995, Gardobond® VP4918/2 sales in the U.S. were approximately \$6,200.
9. From January 1996 through September 1996, Gardobond® VP4918/2 sales in the U.S. were approximately \$9000.
10. In fiscal year 1997, spanning October 1996 through September 1997, Gardobond® VP4918/2 sales in the U.S. were approximately \$212,000.
11. In fiscal year 1998, spanning October 1997 through September 1998, Gardobond® VP4918/2 sales in the U.S. were approximately \$612,000.
12. In fiscal year 1999, spanning October 1998 through September 1999, Gardobond® VP4918/2 sales in the U.S. were approximately \$2,172,000.
13. In fiscal year 2000, spanning October 1999 through September 2000, Gardobond® VP4918/2 sales in the U.S. were approximately \$2,231,564. Of this amount, sales of Gardobond® PC 4610, an improved version of Gardobond® VP4918/2, were \$4,809.
14. From October 2000 through February 2001, Gardobond® VP 4918/2 sales in the U.S. were approximately \$655,372. Of this amount, sales of Gardobond® PC 4610 were approximately \$234,000.

15. Further, Canadian sales of Gardobond® VP4918/2 from October 1988 through the present were approximated \$107,113.

16. Oakite's sales of Gardobond® VP4918/2, and the approximate dollar amounts of these sales, were known in the metal passivation industry. Specifically, it is believed that Henkel and Parker have always been, and continue to be, aware of Oakite's sales of Gardobond® VP4918/2 in the U.S.



Jim Reed  
General Manager, General Industries/Coil  
Chemetall Oakite



KAREN JOAN ECONOMOU  
Notary Public of New Jersey  
My Commission Expires Aug. 27, 2001